

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 14221US02)**

In the Application of:

Mohan Kalkunte, et al.

Serial No. 10/648,573

Filed: August 26, 2003

For: METHOD AND SYSTEM FOR
HANDLING TRAFFIC FOR SERVER
SYSTEMS

Examiner: Saket K. Daftuar

Group Art Unit: 2151

Confirmation No. 4096

Electronically filed on 25-SEP-2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on June 25, 2007 (hereinafter, the Final Office Action) with a period of reply through September 25, 2007. The Applicant also requests review of the arguments stated on page 2 of the Advisory Office Action mailed on September 4, 2007 (hereinafter, the Advisory Office Action). No amendments are being filed with this request.

This request is being timely filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS

The present application includes pending claims 1-30, all of which have been rejected. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Garnett et al. U.S. Patent Number 7,032,037 B2 (hereinafter Garnett). The Applicant respectfully submits that the claims define patentable subject matter. The Applicant also respectfully traverses these rejections at least for the following reasons:

I. Examiner's Response to Arguments in the Final Office Action

The Applicant points out that page 2 of the Advisory Office Action repeats the Examiner's argument stated in pages 2-5 ("Response to Arguments" section) of the Final Office Action. **The Applicant has already responded to Examiner's "Response to Arguments" section in the August 27, 2007 response. However, the Advisory Office Action does not address any of the Applicant's arguments stated in, for example, pages 11-13 of the August 27, 2007 response.** The Applicant maintains the arguments stated in the August 27, 2007 response, and restates these arguments herein below.

The Examiner states the following in the Response to Arguments section of the Final Office Action:

Garnett briefly discloses in Figures 19a and 19b that **load balance is performed on all of the incoming "data traffic"**. Also, in column 31, line 49-column 34, line 40, Garnett briefly discloses why one ordinary skilled in the art would be needing a load balancer and the functionality of load balancing.

* * *

It is clear that Garnett (at Col. 31, lines 53-62) is referring to computer systems management in many different ways such functions include load distribution, access control, and secure transaction management and many others with greatest reliability and/or speed. One ordinary skilled in the art would know all such functions are related to data-processing, data management, and data access control as all of them requires reliable , fast, secure data processing or data management by dedicated computer hardware .

* * *

Therefore, one ordinary skilled in the art would know the weighted load on each server is "data" and each data loads are monitored using a software agent running on each server to determine the load experienced by that particular server. Therefore, Garnett does discloses determining at least one data-processing function associated with said at least one received packet , based on said at least one received packet.

See the Final Office Action at pages 2-4 (emphasis added). **The Applicant points out that even though computer system management may provide many different functionalities, Garnett only discloses load balancing. Furthermore, as stated by the Examiner above (in bolded type), Garnett discloses that the load balancing is performed on all of the incoming data. The Applicant maintains that the load balancing is performed universally and independently of the received packet. In other words, the load balancing (equated by the Examiner to the “data-processing function” limitation in Applicant’s claim 1) is not “based on said at least one received packet,” as recited in Applicant’s claim 1.**

The Final Office Action further states the following:

Garnett also discloses: "Each of the servers 505 is connected to the load balancer 501 via a switch 503. Thus incoming data packets arrive at the load balancer and are routed there through to a selected server 505 ." [Column 32 , lines 59-65].

See the Final Office Action at page 4. The Applicant points out that at the above citation used by the Examiner, Garnett clearly discloses that the load balancer 501 is reached by the incoming data prior to the switch 503 and the server 505. This further supports the fact that Garnett initially performs load balancing on all incoming data, and then the load-balanced data is communicated to the switch 503 and the server 505. This is also clearly illustrated in Figures 19a and 19b of Garnett. In this regard, load balancing is performed by the load balancer 501, prior to even reaching the server 505. Therefore, the Applicant also maintains that Garnett does not disclose steering of the at least one received packet to one or more of a plurality of blade servers that handles the determined data-processing function (which the Examiner has equated to the load balancing), as recited by the Applicant in claim 1.

II. Rejection of Claims 1-30 under 35 U.S.C. § 102(e)

The Applicant now turns to the rejection of claims 1-30 under 35 U.S.C. 102(e) as being anticipated by Garnett.

A. Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)

With regard to the rejection of independent claim 1 under 102(e), the Applicant submits that Garnett does not disclose or suggest at least the limitation of “determining at least one data-processing function associated with said at least one received packet, based on said at least one received packet,” as recited by the Applicant in independent claim 1. Regarding claim 1, the Final Office Action states the following:

Garnett discloses a method for processing data in a server, the method comprising: receiving at least one [data packet] packet (see column 32, line 55 - column 33, line 44 and column 35, line 7 - column 36, line 13); **determining at least one function [load balancing]** associated with said at least one received packet (see column 32, line 55 - column 33, line 44 and column 35, line 7 - column 36, line 13); and **steering [forwarding or transmitting outgoing packet] said at least one received packet to at least one of a plurality of blade servers** that handles said determined function (see column 32, line 55 - column 33, line 44 and column 35, line 7 - column 36, line 13).

See the Final Office Action at pages 5-6 (emphasis added). The Applicant points out that the Examiner is using the same citations (column 32, line 55 - column 33, line 44 and column 35, line 7 - column 36, line 13) of Garnett to reject all of the elements in Applicant's claim 1.

The above-reference citation from columns 32-33 of Garnett discloses the logical arrangement of a load balancer within a computer system and the paths of data packets through a computer system using a load balancer. The citation from columns 35-36 discloses how load balancing is performed by a load balancer of Garnett.

The Examiner has equated the "determining at least one data-processing function" limitation to the "load balancing" of Garnett. **The Applicant respectfully disagrees. As illustrated in Figures 19a and 19b, Garnett discloses that load balancing is initially performed on all of the incoming data traffic.** See Garnett, col. 32, lines 63-65 and col. 33, lines 2-3. **Therefore, load balancing is uniformly performed with regard to all incoming packets and there is no determination of a data-processing function based on the received packet.**

Furthermore, assuming for the sake of argument that the "determining at least one data-processing function" limitation is the same as the "load balancing" of Garnett, then Garnett does not disclose steering of the at least one received packet to one or more of a plurality of blade servers that handles the determined data-processing function (which the Examiner has equated to the load balancing), as recited by the Applicant in claim 1. As stated above, Garnett discloses that load balancing is performed by the load balancer with regard to all incoming packets, prior to the data even reaching the server 505 of Garnett. Therefore, steering for purposes of load balancing, after determination of a data-processing function, is not possible in the system of Garnett.

The Applicant also points out that load balancing is performed by the load balancer 501, which is not a blade server, as disclosed by the Applicant.

Therefore, the Applicant maintains that Garnett does not disclose or suggest at least the limitation of "determining at least one data-processing function associated with said at least one received packet, based on said at least one received packet," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Garnett and is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-10, 12-20 and 22-30

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 102(e) as being anticipated by Garnett has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20 and 22-30 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-10, 12-20 and 22-30.

III. Conclusion

The Applicant respectfully submits that all claims 1-30 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

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